

Exhibit B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

BOOKING.COM B.V.,

Plaintiff,

v.

MICHELLE K. LEE,
Under Secretary of Commerce for
Intellectual Property and Director of
the United States Patent and
Trademark Office, et al.,

Defendants.

Civil Action No. 1:16-cv-425-LMB-IDD

DECLARATION OF EDWARD A. BLAIR

I, Edward A. Blair, hereby declare as follows:

1. I am over eighteen (18) years of age and believe in the obligations of an oath.
2. The attached is a true and correct copy of my expert report in this case. The statements I made in that report represent my professional opinion on the matters discussed.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: October 14, 2016



Edward A. Blair, Ph.D.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

BOOKING.COM B.V.,

Plaintiff,

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EXPERT REPORT OF EDWARD A. BLAIR, Ph.D.

Summary

I was asked by The United States Patent and Trademark Office (USPTO) to render my opinion concerning the September, 2016, expert report submitted by Mr. Hal Poret in the above-captioned matter. Specifically, I was asked to examine the survey that Mr. Poret designed and caused to be conducted (the “Poret Survey”) and comment on any factors that might influence the results or interpretation of that survey regarding the extent to which BOOKING.COM is perceived to be a brand name or a common name.

In my opinion, the following factors are relevant to the results obtained or the proper interpretation of the Poret Survey regarding the extent to which BOOKING.COM is perceived to be a brand name or a common name. First, the population surveyed is under-inclusive. The Poret Survey is restricted to “consumers who search for or make hotel or travel arrangements online.” However, none of the trademark applications at issue are limited to services provided online, and thus the relevant population includes consumers who search for or make hotel or travel arrangements other than online. The restriction of respondents to those “who search for or make hotel or travel arrangements online” makes the Poret Survey under-inclusive. This is relevant to the results because consumers who do not use online services may be less aware of BOOKING.COM, and hence the percentage of respondents who said that BOOKING.COM is a brand name (given response options of brand name, common name, or don’t know) may have been lower if the survey included all relevant consumers. Second, the Poret Survey did not effectively educate or test respondents regarding the distinction between DOT-COM brand names and common names. It appears that there was some tendency for respondents to think that any DOT-COM name is a brand. Third, the order in which DOT-COM terms were presented to respondents made a significant difference in the results. These response order effects reinforce the idea that respondents were not effectively educated or tested regarding the distinction between DOT-COM brand names and common names, and indicate that respondents appear to be answering based on context and inference rather than actual knowledge.

EXPERT REPORT OF EDWARD A. BLAIR, Ph.D.

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Expert's Qualifications, Background and Compensation

My name is Edward A. Blair. I am the Michael J. Cemo Professor of Marketing & Entrepreneurship and Chairman of the Department of Marketing and Entrepreneurship in the C.T. Bauer College of Business at the University of Houston in Houston, Texas. I also work as an independent consultant, and it is in that capacity that I write this report.

I have served as chair of the American Statistical Association Committee on Energy Statistics which advises the U.S. Energy Information Administration on statistical matters. I previously served on the U.S. Census Bureau Advisory Committee. I also have served as national conference chair for the American Marketing Association (AMA).

I am the author of various publications on marketing and survey research procedures and have served on the editorial boards of the *Journal of Marketing Research*, *Journal of the Academy of Marketing Science*, and *Journal of Business Research*, and the policy board for the *Journal of Consumer Research*. Books that I have co-authored include *Designing Surveys (3e)* and *Applied Survey Sampling*.

I have taught graduate-level university courses on Marketing Research, Survey Methods, Sampling, Statistics, and Multivariate Analysis. I also taught Sampling and Survey Methods at the AMA's School of Marketing Research from its inception in 1980 through 1999.

I have testified in lawsuits and been accepted as an expert in state and federal courts. A professional resume showing further information including a list of publications is shown as Appendix 1 to this report, and a list of lawsuits in which I have testified in recent years is shown as Appendix 2. My hourly consulting rate is \$500 per hour. My compensation is not contingent upon the results of this matter.

Assignment and Materials Reviewed

I was asked by The United States Patent and Trademark Office (USPTO) to render my opinions concerning the September, 2016 expert report submitted by Mr. Hal Poret in the above-captioned matter. Specifically, I was asked to examine the survey that Mr. Poret designed and caused to be conducted (the “Poret Survey”) and comment on any factors that might influence the results or interpretation of that survey regarding the extent to which BOOKING.COM is perceived to be a brand name or a common name.

In this regard, I have reviewed the following materials:

- Expert report of Hal Poret
- Plaintiff’s Complaint in this matter
- Defendant’s Answer
- Trademark Application Serial Nos. 79122365, 79122366 79114998, and 85485097 for BOOKING.COM
- Trademark Trial and Appeal Board (TTAB) opinions regarding Application Serial Nos. 79122365, 79122366 79114998, and 85485097 for BOOKING.COM
- Applicant’s January 16, 2007 Request for Remand of Application to Examining Attorney to Consider New Evidence Pursuant to Trademark Rule 2.142(d) in *In Re Hotels.com* (Application Serial No. 78/277681, TTABVUE 10)
- TTAB opinion in *In re Hotels.com, L.P.*, 87 U.S.P.Q.2d 1100 (TTAB 2008)
- The Federal Circuit’s opinion in *In re Hotels.com, L.P.*, 573 F.3d 1300 (Fed. Cir. 2009);
- The Federal Circuit’s opinion in *In re 1800Mattress.com IP, LLC*, 586 F.3d 1359 (Fed. Cir. 2009)
- The Ninth Circuit’s opinion in *Advertise.com, Inc. v. AOL Advertising, Inc.*, 616 F.3d 974 (9th Cir. 2010)

Background on the Poret Survey

According to Mr. Poret's report, the Poret Survey included the following elements.

Sample Qualifications

The survey was conducted online with a total of 400 respondents "among consumers who search for or make hotel or travel arrangements online."¹

Potential respondents were asked: "In the past 6 months, which of the following, if any, have you used a website or mobile app for?" One of the response options was: "To search for or make hotel or travel arrangements." Respondents who selected this option were considered part of the relevant population and qualified to participate in the survey.²

Potential respondents also were asked "In the next 6 months, which of the following, if any, are you likely to use a website or mobile app for?" with the same list of options.

Respondents who selected "To search for or make hotel or travel arrangements" in response to this question were also considered part of the relevant population and qualified to participate in the main survey.³

Measurement Procedures

The Poret Survey used a Teflon format for assessing whether a term is a brand name or a common name. There were two versions of the survey, one in which references to "brand name" always preceded references to "common name," and one in which references to "common name" always came first.⁴ The version with brand name first proceeded as follows.⁵

Respondents saw a computer screen that said:

¹ Poret Report p. 8 (B-000008).

² Poret Report p. 19 (B-000019).

³ Poret Report p. 20 (B-000020).

⁴ Poret Report p. 8, 15 (B-000008, B-000015).

⁵ The following description is taken from Poret Report p. 9-13 (B-000009 – B000013).

“This survey is about brand names and common names. In a few moments you will be asked about a number of terms that you may or may not have seen or heard before. But first, please read the next two screens about what we mean by a brand name and what we mean by a common name.”

On a new screen, respondents were told:

“Brand names are names that companies use to identify who a product or service comes from. Brands names primarily let the consumer know that a product or service comes from a specific company.

For example, TOYOTA, CHASE, and STAPLES.COM are all brand names. These terms primarily identify for a consumer who a product or service comes from.”

On the next screen, respondents were told:

“Common names are words used to identify a type of product or service – in other words, what the product or service is, not who makes it. Common names primarily let the consumers know what type of product or service is being offered.

For example, unlike the brand names TOYOTA, CHASE, and STAPLES.COM; AUTOMOBILE, BANK, AND OFFICESUPPLIES.COM are all common names. These terms primarily identify for the consumer what type of product or service a company is selling, rather than who the product or service comes from.”

Respondents were then asked:

“Do you understand the difference between a brand name and a common name?”

Respondents who answered “Yes” continued with the interview. Those who indicated they did not understand or were unsure did not continue.

Next, respondents were asked:

“Which type of name would you say KELLOGG is?”

Respondents were also asked:

“Which type of name would you say CEREAL is?”

Response options to both questions were: Brand name, Common name, and Don’t know.

Respondents who correctly answered that KELLOGG is a brand name and that CEREAL is a

common name continued with the survey. Respondents who did not correctly answer both these questions were excluded from the survey.

Respondents who continued were then instructed:

“You will now see a series of bolded terms, one at a time, that you may or may not have seen or heard before. Under each term, you will also see a description of products or services for that term. For each term shown in bold, please answer whether you think the term is a brand name or a common name in the context of the products or services described. Or if you don’t know, you may select that option.”

Then, one at a time, respondents were shown one of seven terms with product descriptions until all seven terms had been seen. For each term, respondents were asked:

“Do you think this is a ...” (Response options: Brand name, Common name, Don’t know)

The list of terms and product descriptions shown to respondents included the following term at issue:⁶

BOOKING.COM
Hotel and other lodging reservation services

Three brand name terms:

ETRADE.COM
Stock and investor broker services

PEPSI
Cola and other soft drinks

SHUTTERFLY
Photo-sharing and photo gifts service

⁶ Poret Report p. 12-13 (B-000012 – B000013).

And three common name terms:

SPORTING GOODS
Products used in sports and other physical activity

WASHINGMACHINE.COM
Reviews and sales of washing machines

SUPERMARKET
Retail sale of food and other groceries

An issue of apparent concern to Mr. Poret was the possibility that respondents might think that any DOT-COM name is a brand. His report states that “in order to address possible concerns that survey respondents might answer that any DOT-COM name is a brand... the list of terms shown in the Teflon study included other DOT-COM terms to assess and control for the extent to which respondents might assume and answer that any DOT-COM term is a brand name. This allows us to compare the perceptions of BOOKING.COM to other DOT-COM terms that clearly do or do not function as brands in order to assess whether consumer perception of BOOKING.COM as a brand name meaningfully exceeds the rate at which respondents will answer that a generic term with “.com” at the end is a brand.”⁷

Specifically, Mr. Poret’s report states that “ETRADE.COM was included in the lineup of terms as an example of a DOT-COM brand name and WASHINGMACHINE.COM was included as an example of a DOT-COM generic term. The inclusion of WASHINGMACHINE.COM in particular allows us to assess the extent to which respondents will identify a generic term as a brand when ‘.com’ is added to the end, and to assess the extent to which the rate of perceiving BOOKING.COM as a brand exceeds this ‘noise’ level.”⁸

⁷ Poret Report p. 8 (B-000008).

⁸ Poret Report p. 14 (B000014).

Mr. Poret's report also states that "STAPLES.COM was included in the examples of brands as an illustration of a DOT-COM term that is a trademark" and "OFFICESUPPLIES.COM was included as an example of a common term to illustrate that not all DOT-COM terms are brand names and that a term that takes a generic term such as OFFICE SUPPLIES and adds '.com' can be a generic term. Since STAPLES.COM (as a brand) and OFFICESUPPLIES.COM (as a generic term) were both included in the examples, the survey neither gave emphasis to 'brand' or 'common' in the case of DOT-COM terms."⁹

According to Mr. Poret's report, there were four separate rotations that varied the order in which terms were presented to respondents. Any given respondent received one of these rotations; in other words, the 400 total respondents were divided into 100 per rotation. The order in which terms were presented in the four rotations is shown in the following table, with the first term presented on top and the last term presented on bottom.¹⁰

TABLE 1			
Rotation 1	Rotation 2	Rotation 3	Rotation 4
BOOKING.COM	WASHINGMACHINE.COM	SPORTING GOODS	WASHINGMACHINE.COM
SPORTING GOODS	SHUTTERFLY	ETRADE.COM	SHUTTERFLY
ETRADE.COM	BOOKING.COM	PEPSI	SUPERMARKET
PEPSI	SPORTING GOODS	SUPERMARKET	SPORTING GOODS
SHUTTERFLY	PEPSI	BOOKING.COM	ETRADE.COM
WASHINGMACHINE.COM	ETRADE.COM	SHUTTERFLY	PEPSI
SUPERMARKET	SUPERMARKET	WASHINGMACHINE.COM	BOOKING.COM

⁹ Poret Report p. 9, 10 (B-000009, B-000010).

¹⁰ Poret Report p. 13-14 (B-000013 – B-000014).

Regarding the DOT-COM terms, it may be seen that WASHINGMACHINE.COM is presented before BOOKING.COM and ETRADE.COM in Rotations 2 and 4, and after both of those terms in Rotations 1 and 3.

It also may be seen that BOOKING.COM is presented after ETRADE.COM and before WASHINGMACHINE.COM in Rotation 3 (that is, after the brand name and before the common name), after WASHINGMACHINE.COM and before ETRADE.COM in Rotation 2 (that is, after the common name and before the brand name), after both other terms in Rotation 4, and before both other terms in Rotation 1.

Overall results of the survey, as reported by Mr. Poret, are as follows:¹¹

TABLE 2	
	Percentage of respondents who said this term is a brand name, given response options of brand name, common name, or don't know
BOOKING.COM	74.8%
PEPSI	99.3%
ETRADE.COM	96.8%
SHUTTERFLY	96.8%
SPORTING GOODS	0.5%
WASHINGMACHINE.COM	33.0% ¹²
SUPERMARKET	0.0%

¹¹ Poret Report p. 28, 29 (B-000028, B-000029).

¹² This is erroneously listed as 30% on Poret Report p. 17 (B-000017). Correspondingly, Poret Report p. 18 (B-000018) lists the difference between BOOKING.COM and WASHINGMACHINE.COM as “nearly 45%” rather than the actual 41.8%.

Comments on the Poret Survey

In my opinion, the following factors are relevant to the results obtained or the proper interpretation of the Poret Survey regarding the extent to which BOOKING.COM is perceived to be a brand name or a common name.

The Population Surveyed Is Under-inclusive

The Poret Survey is restricted to “consumers who search for or make hotel or travel arrangements online.” However, none of the trademark applications at issue are limited to services provided online.

Application Serial Nos. 79122365 and 79122366 are for “Hotel reservation services for others; holiday accommodation reservation services and resort reservation services, namely, providing hotel room reservation services and resort hotel reservation services and providing online hotel and resort hotel room reservation services; providing information about hotels, hotel accommodations and resorts accommodations, whether or not based on the valuation of customers; information, advice and consultancy relating to the aforesaid services; the aforesaid services also provided electronically,” in International Class 43.¹³

Application Serial No. 85485097 is for “Travel agency services, namely, making reservations for transportation; travel and tour ticket reservation services; travel agency services, namely, making reservations for transportation for tourists; provision of travel information; providing consultation related to making reservations for transportation, and travel and tour ticket reservation; all of the foregoing services rendered in-person and via the internet,” in International Class 39. Also, “Making hotel reservations for others in person and via the internet; providing personalized information about hotels and temporary accommodations for travel in-

¹³ From Application Serial Nos. 79122365 (A1890) and 79122366 (A2898); underlining added for emphasis

person and via the Internet; providing on-line reviews of hotels; consultation services related to making hotel reservations for others, provision of personalized information about hotels and temporary accommodations for travel, and on-line reviews of hotels,” in International Class 43.¹⁴

Application Serial No. 79114998 is for “Arranging of tours and arranging of tours online; reservation and sale of travel tickets and online reservation and sale of travel tickets; information, advice and consultancy regarding the arranging of tours and the reservation and sale of travel tickets; provision of information relating to travel and travel destinations; travel and tour agency services, namely, travel and tour ticket reservation services; travel agency services; tourist agency services; providing online travel and tourism services, namely, providing online travel and tour ticket reservation services, online travel agency services, online tourist agency services and providing online information relating to travel and travel destinations,” in International Class 39. Also, “Making hotel reservations for others; holiday accommodation reservation services and resort reservation services, namely, providing hotel room reservation services and resort hotel reservation services and providing online hotel and resort hotel room reservation services; providing information about hotels, holiday accommodations and resorts accommodations, whether or not based on the valuation of customers; providing information, advice and consultancy relating making hotel reservations and temporary accommodation reservations; providing online information, advice and consultancy relating making hotel reservations and temporary accommodation reservations,” in International Class 43.¹⁵

If the applications are not limited to services provided online, then the relevant population includes consumers who search for or make hotel or travel arrangements other than

¹⁴ From Application Serial No. 85485097 (A3565); underlining added for emphasis

¹⁵ From Application Serial No. 79114998 (A670); underlining added for emphasis

online, and the restriction to “consumers who search for or make hotel or travel arrangements online” makes the Poret Survey under-inclusive.

This is relevant to the results because consumers who do not use online services may be less aware of BOOKING.COM, and hence the percentage of respondents who said that BOOKING.COM is a brand name (given response options of brand name, common name, or don’t know) may have been lower if the survey included all relevant consumers.

Respondents were not effectively educated or tested regarding the distinction between DOT-COM brand names and common names

The Poret Survey educated respondents on the distinction between brand names and common names by providing the following information.

“Brand names are names that companies use to identify who a product or service comes from. Brands names primarily let the consumer know that a product or service comes from a specific company.

For example, TOYOTA, CHASE, and STAPLES.COM are all brand names. These terms primarily identify for a consumer who a product or service comes from.”

And:

“Common names are words used to identify a type of product or service – in other words, what the product or service is, not who makes it. Common names primarily let the consumers know what type of product or service is being offered.

For example, unlike the brand names TOYOTA, CHASE, and STAPLES.COM; AUTOMOBILE, BANK, AND OFFICESUPPLIES.COM are all common names. These terms primarily identify for the consumer what type of product or service a company is selling, rather than who the product or service comes from.”

The survey then tested respondents’ ability to make this distinction by asking:

“Which type of name would you say KELLOGG is?”

And:

“Which type of name would you say CEREAL is?”

Respondents who correctly answered that KELLOGG is a brand name and that CEREAL is a common name continued with the survey. Respondents who did not correctly answer both these questions were excluded from the survey.

Procedurally, then, the information that was provided to educate respondents on the distinction between brand names and common names did not focus on DOT-COM terms and did not explain the difference between brand names and common names in a DOT-COM context. Also, respondents were not tested on their ability to distinguish a DOT-COM brand name from a DOT-COM common name.

The survey results indicate that these procedures did not effectively educate or test respondents regarding the distinction between DOT-COM brand names and common names. The results show that one-third of the respondents, 33.0%, incorrectly identified WASHINGMACHINE.COM, the DOT-COM common name used in the survey, as a brand name. This compares with 0.5% and 0.0% for SPORTING GOODS and SUPERMARKET respectively, the non-DOT-COM common names. It appears that there was some tendency for respondents to think that any DOT-COM name is a brand.¹⁶

Mr. Poret's report suggests that this effect can be controlled by comparing the results for BOOKING.COM to the results for WASHINGMACHING.COM. The report states that "The inclusion of WASHINGMACHINE.COM in particular allows us to assess the extent to which respondents will identify a generic term as a brand when '.com' is added to the end, and to assess

¹⁶ In fact, in the pooled data for Rotations 1 and 3, where WASHINGMACHINE.COM was presented after the other DOT-COM terms, the number of respondents who incorrectly said this term is a brand name was larger than the number who said it is a common name. Of 200 respondents in Rotations 1 and 3, 48% chose the "brand name" response option for WASHINGMACHINE.COM, 44% chose "common name," and 8% chose "don't know." In Rotation 3 specifically, 58% incorrectly chose "brand name," 34% chose "common name," and 8% chose "don't know."

the extent to which the rate of perceiving BOOKING.COM as a brand exceeds this ‘noise’ level.”¹⁷

Two points are in order. First, if this argument is accepted, the extent to which the rate of perceiving BOOKING.COM as a brand exceeds this “noise” level is 41.8%, or less than 50%.

Second, if respondents have not been effectively educated or tested regarding the distinction between DOT-COM brand names and common names, and to some extent are guessing whether any given DOT-COM term is a brand name, the effect may not be fully controlled by subtracting the results for WASHINGMACHINE.COM from the results for BOOKING.COM. The difference in results for these two terms may not only be attributable to recognition of BOOKING.COM as a brand name, but also to other factors such as the possibility that a washing machine is a more common object, or that the WASHINGMACHINE.COM term is more similar than BOOKING.COM to the OFFICESUPPLIES.COM example that respondents were told was a common name.

Respondents appear to be answering based on context and inference rather than actual knowledge

A comparison of results across the four rotations shows significant “response order” effects in the results for WASHINGMACHINE.COM and BOOKING.COM. These response order effects reinforce the idea that respondents were not effectively educated or tested regarding the distinction between DOT-COM brand names and common names, and indicate that respondents appear to be answering based on context and inference rather than actual knowledge.

¹⁷ Poret Report p. 14 (B-000014).

The following table shows, for each term used in the Poret Survey, the percentage of respondents (of 100 in in each rotation) who said the term is a brand name, given response options of brand name, common name, or don't know.

TABLE 3				
Percentage of respondents (of 100 in each rotation) who said this term is a brand name, given response options of brand name, common name, or don't know				
	Rotation 1	Rotation 2	Rotation 3	Rotation 4
<i>BOOKING.COM</i>	74%	53%	94%	78%
PEPSI	99%	100%	98%	100%
ETRADE.COM	95%	94%	99%	99%
SHUTTERFLY	92%	100%	99%	97%
SPORTING GOODS	0%	0%	1%	1%
<i>WASHINGMACHINE.COM</i>	38%	19%	58%	17%
SUPERMARKET	0%	0%	0%	0%

As may be seen in the table, there are significant differences in results for *BOOKING.COM* and *WASHINGMACHINE.COM* across the four rotations; that is, across the four orders in which terms were presented.

Overall, 33.0% (132/400¹⁸) of respondents said that *WASHINGMACHINE.COM* is a brand name. However, the results depend on whether *WASHINGMACHINE.COM* was presented before or after *BOOKING.COM* and *ETRADE.COM*. In Rotations 2 and 4, where *WASHINGMACHINE.COM* was presented before those other terms (and in closer proximity to the *OFFICESUPPLIES.COM* example), 18.0% (36/200) of respondents said that *WASHINGMACHINE.COM* is a brand name. This compares with 48.0% (96/200) in Rotations

¹⁸ 38 of 100 in Rotation 1 plus 19 of 100 in Rotation 2 plus 58 of 100 in Rotation 3 plus 17 of 100 in Rotation 4 equals a total of 132 of 400 across all rotations.

1 and 3, where WASHINGMACHINE.COM was presented after those other terms. The comparison is shown in the following table.

TABLE 4	
WASHINGMACHINE.COM	Percentage of respondents that said this term is a brand name
When presented before ETRADE.COM and BOOKING.COM	18.0%
When presented after ETRADE.COM and BOOKING.COM	48.0%

Results for BOOKING.COM also depended on presentation order. Overall, 74.8% (299/400) of respondents identified BOOKING.COM as a brand name. However, in Rotation 2, where BOOKING.COM was presented after WASHINGMACHINE.COM and before ETRADE.COM (that is, after the common name and before the brand name), 53.0% (53/100) of respondents identified BOOKING.COM as a brand name. This compares with 94.0% (94/100) in Rotation 3, where BOOKING.COM was presented after ETRADE.COM and before WASHINGMACHINE.COM (that is, after the brand name and before the common name). The comparison is shown in the following table.

TABLE 5	
BOOKING.COM	Percentage of respondents that said this term is a brand name
When presented after WASHINGMACHINE.COM and before ETRADE.COM	53.0%
When presented after ETRADE.COM and before WASHINGMACHINE.COM	94.0%

It is apparent that order of presentation made a significant difference in the results for these terms. These response order effects reinforce the idea that respondents were not effectively educated or tested regarding the distinction between DOT-COM brand names and common names, and indicate that respondents appear to be answering based on context and inference rather than actual knowledge.

Summary

To summarize, in my opinion, the following factors are relevant to the results obtained or the proper interpretation of the Poret Survey regarding the extent to which BOOKING.COM is perceived to be a brand name or a common name.

- First, the population surveyed is under-inclusive. The Poret Survey is restricted to “consumers who search for or make hotel or travel arrangements online.” However, none of the trademark applications at issue are limited to services provided online, and thus the relevant population includes consumers who search for or make hotel or travel arrangements other than online. The restriction of respondents to those “who search for or make hotel or travel arrangements online” makes the Poret Survey under-inclusive. This is relevant to the results because consumers who do not use online services may be less aware of BOOKING.COM, and hence the percentage of respondents who said that BOOKING.COM is a brand name (given response options of brand name, common name, or don’t know) may have been lower if the survey included all relevant consumers.
- Second, the Poret Survey did not effectively educate or test respondents regarding the distinction between DOT-COM brand names and common names. It appears that there was some tendency for respondents to think that any DOT-COM name is a brand.

- Third, the order in which DOT-COM terms were presented to respondents made a significant difference in the results. These response order effects reinforce the idea that respondents were not effectively educated or tested regarding the distinction between DOT-COM brand names and common names, and indicate that respondents appear to be answering based on context and inference rather than actual knowledge.

I reserve the right to supplement this report based on further review of the data or any additional arguments or facts that may be presented to me.

Signature

(SIGNED) E. A. Blain

(DATE) 10/13/16

APPENDIX 1

BLAIR C.V.

VITAE
Edward A. Blair

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Education

B.S. (with High Honors), University of Illinois, 1973
Major Field: Business Administration
Minor Field: English Literature

Ph.D., University of Illinois, 1978
Major Field: Business Administration
Minor Field: Statistics

Academic Positions

2005 -	Michael J. Cemo Professor and Chair, Department of Marketing & Entrepreneurship, University of Houston
1996 -	Chair, Department of Marketing & Entrepreneurship, University of Houston
1995-96	Visiting Professor, Rice University
1993 -	Professor, Department of Marketing & Entrepreneurship, University of Houston
1991	Visiting Associate Professor, Madrid Business School (Madrid, Spain)
1988	Visiting Associate Professor, Rice University
1982-93	Associate Professor, Department of Marketing, University of Houston
1977-82	Assistant Professor, Department of Marketing, University of Houston

Vitae, E. A. Blair

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Research and Publications

Publications - Books

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E. Blair, "Sampling Issues in Trade Area Maps Drawn from Shopper Surveys" Journal of Marketing, Winter 1983.

G. Zinkhan and E. Blair, "An Assessment of the Cloze Procedure as an Advertising Copy Test" Journalism Quarterly, Summer 1984.

E. Blair and S. Burton, "Cognitive Processes Used by Survey Respondents to Answer Behavioral Frequency Questions" Journal of Consumer Research, September 1987.

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-- Portions presented earlier in "Processes Used in the Formulation of Behavioral Frequency Reports in Surveys," American Statistical Association Conference, 1986.

E. Blair and S. Burton, "Response Frame Effects in Most Important Attribute Data" Applied Marketing Research, Spring 1988.

-- Earlier draft presented at American Association for Public Opinion Research Conference, 1987.

E. Blair and G. Ganesh, "Characteristics of Interval-Based Estimates of Autobiographical Frequencies" Applied Cognitive Psychology, May-June 1991.

S. Burton and E. Blair, "Task Conditions, Response Formulation Processes, and Response Accuracy for Behavioral Frequency Questions in Surveys" Public Opinion Quarterly, Spring 1991.

A. Biswas and E. Blair, "Contextual Effects of Reference Prices in Retail Advertisements" Journal of Marketing, July 1991.

S. Sudman and E. Blair, "Sampling in the 21st Century" Journal of the Academy of Marketing Science, Spring 1999.

-- Reprinted in D. de Vaus (ed.) Social Surveys (Sage Benchmarks in Social Research Methods), London: Sage Publications Ltd., 2002.

-- Reprinted in N. Malhotra (ed.) Fundamentals of Marketing Research (Sage Library in Marketing), London: Sage Publications Ltd., 2007.

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K. Smith, E. Jones and E. Blair, "Managing Salesperson Motivation in a Territory Realignment," Journal of Personal Selling and Sales Management, Fall, 2000.

P. Krishnamurthy, P. Carter and E. Blair, "Attribute Framing and Goal Framing Effects in Health Decisions," Organizational Behavior and Human Decision Processes, July, 2001.

A. Baldinger, E. Blair and R. Echambadi, "Why Brands Grow," Journal of Advertising Research, January-February, 2002.

E. Blair, J. Harris and K. Monroe, "Effects of Shopping Information on Consumers' Responses to Comparative Price Claims," Journal of Retailing, Fall, 2002.

J. Harris and E. Blair, "Effects of Functional Risk Salience on Consumers' Preference for Product Bundles," Journal of the Academy of Marketing Science, January, 2006.

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E. Blair and J. Blair, "Dual Frame Web-Telephone Sampling for Rare Groups," Journal of Official Statistics, June, 2006.

J. Harris and E. Blair, "Consumer Preference for Product Bundles: The Role of Reduced Search Costs," Journal of the Academy of Marketing Science, October, 2006.

B. Wansink, G. Cordua, E. Blair, C. Payne and S. Geiger, "Wine Promotions in Restaurants: Do Beverage Sales Contribute or Cannibalize," Cornell Hotel and Restaurant Administration Quarterly, November, 2006.

K. Aboulnasr, O. Narasimhan, E. Blair and R. Chandy, "Competitive Response to Radical Innovations," Journal of Marketing, May, 2008.

J. Noriega and E. Blair, "Advertising to Bilinguals: Does the Language of Advertising Influence the Nature of Thoughts?" Journal of Marketing, September, 2008.

J. Harris and E. Blair, "Consumer Processing of Bundled Prices: When Do Discounts Matter" Journal of Product & Brand Management, 2012.

R. Echambadi, R. Jindal and E. Blair, "Evaluating and Managing Brand Repurchase across Multiple Geographic Retail Markets," Journal of Retailing, 2013.

Publications - Chapters in Books (not cited above)

"Interviewer Variations in Asking Questions" Chapter 3 in N. Bradburn et al., Improving Interview Method and Questionnaire Design, San Francisco: Jossey-Bass, 1979.

-- Portions presented earlier in "Occurrence and Recognition of Non-Programmed Interviewer Speech Behaviors," American Marketing Association Educators' Conference, 1978.

-- Other portions presented earlier in "Testing Interviewer Effects on Survey Data," American Association for Public Opinion Research Conference, 1979.

"Interviewing in the Presence of Others" Chapter 8 in N. Bradburn et al., Improving Interview Method and Questionnaire Design, San Francisco: Jossey-Bass, 1979.

"On Providing Population Data to Improve Respondents' Estimates of Autobiographical Frequencies" (with K. Williamson) in N. Schwarz and S. Sudman, Autobiographical Memory and the Validity of Retrospective Reports, New York: Springer-Verlag, 1994.

-- Previous draft presented at American Statistical Association Conference, 1990.

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"Managerial Implications of Kent Monroe's Research on Comparative Price Advertising" in Jagdish Sheth (ed.), Legends of Marketing: Kent Monroe, New Delhi: Sage Pvt. Ltd., 2011.

Publications - Conference Papers (not cited above)

"Wroe Alderson and Modern Marketing Theory" (with K. Uhl), American Marketing Association Marketing Theory Conference, August, 1977.

"Response Effects in Threatening Questions" (with S. Sudman), American Psychological Association Conference, Division 23, August, 1977.

"Alternative Measures of Frequency Bias in Shopper Surveys" (with S. Calcich), American Marketing Association Educators' Conference, August, 1980.

"Questionnaire Design Manipulations and Response Rates to a Mail Consumer Finances Survey" (with V. Veth and E. L. Landon, Jr.), American Marketing Association Educators' Conference, August, 1982.

"The Perceptual Task in Acquisition of Package Information" (with S. Calcich), Association for Consumer Research Conference, October, 1982.

"Some Effects of Requesting Active Commitment from Survey Respondents" (with V. Veth and E. L. Landon, Jr.), American Association for Public Opinion Research Conference, May, 1983.

"Commitment Requests and Response Rates in Three Mail Surveys" (with G. Ganesh), American Marketing Association Educators' Conference, August, 1984.

"The Realist View of Science: Implications for Marketing" (with G. Zinkhan), American Marketing Association Theory Conference, October, 1984.

"Cognitive Processes Used to Answer Expenditure Questions" (with S. Burton and D. Lichtenstein), American Statistical Association Conference, August, 1988.

"On Estimating Distributional Characteristics from Categorized Data" (with L. R. LaMotte), American Statistical Association Conference, August, 1988.

"Yielding to Temptation Due to Depletion: Can Mental Budgets Help?" (with S. Prokopec and P. Krishnamurthy), Society for Consumer Psychology, February, 2009.

"Post-Choice Effects of Pre-Choice Uncertainty: Influences of Uncertainty on Satisfaction and Repurchase" (with D. Andrews), Society for Consumer Psychology, February, 2010.

"Investigating New Product Purchase Behavior: A Multi-Product Individual-Level Model for New Product Sales" (with C. Liutec and R. Du), INFORMS Marketing Science, June, 2012

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Publications - Book Reviews

The Recall Method in Social Surveys by L. Moss and H. Goldstein; Journal of Marketing Research, May 1980

Question Framing and Response Consistency by R. Hogarth; Journal of Marketing Research, November 1982.

The Research Interview: Uses and Approaches by M. Brenner, J. Brown and D. Canter; Journal of Marketing Research, May 1986.

How Many Subjects? by H Kraemer and S. Thiemann; Journal of Marketing Research, May 1989.

An Experimental Comparison of Telephone and Personal Health Interview Surveys by O. Thornberry (National Center for Health Statistics monograph, Series 2, No. 106); Public Opinion Quarterly, Spring 1989.

Randomized Response: Theory and Techniques by A. Chaudhuri and R. Mukerjee; Journal of Marketing Research, November 1989.

Teaching

Academic Courses Taught

Principles of Marketing	(Undergraduate)
Marketing Research	(Undergraduate)
Retailing Management	(Undergraduate)
Overview of Entrepreneurship	(Undergraduate)
Entrepreneurial Costs & Budgeting	(Undergraduate)
Entrepreneurial Revenues	(Undergraduate)
Entrepreneurial Capital	(Undergraduate)
Marketing Management	(Masters)
Marketing Research	(Masters)
Entrepreneurship/Venture Planning	(Masters)
Business Consulting Lab	(Masters)
Statistics	(Masters)
Marketing Theory	(Doctoral)
Marketing Research Methods	(Doctoral)
Multivariate Analysis	(Doctoral)
Sampling Methods	(Doctoral)
Applied Survey Research	(Doctoral)

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Professional Programs Taught

Lecturer on Sampling at the American Marketing Association's School of Marketing Research from its inception in 1980 to 1999; also taught Survey Methods and Conjoint Analysis in this program

Lecturer on Survey Methods at the American Marketing Association's Advanced Research Techniques Forum (ARTF)

Lecturer on Marketing, Marketing Research, and New Product Development in numerous programs at the University of Houston Center for Executive Development

Other Teaching Details

As lecturer in continuing education programs, have taught sampling and survey design to more than 1,000 marketing research professionals. Companies represented include Coca-Cola, Procter & Gamble, Union Pacific, Sears, General Electric, Union Carbide, Dow Chemical, Gerber Products, Federal Express, AT&T, Hallmark Cards and many others.

Taught the first Entrepreneurship course offered at UH and was a founding instructor in the current Entrepreneurship program. Have directed the preparation of more than 150 business plans and have seen more than 30 former students start businesses.

Administration and Service

Administrative and service activities include:

Chair, UH Department of Marketing & Entrepreneurship, 1996-present

Member, Journal of Consumer Research Policy Board, 2013-present

-- Vice-President, JCR Policy Board, 2016

Member, American Statistical Association Committee on Energy Statistics (advisory to U.S. Energy Information Administration), 2007-2012

-- Chair, ASA Committee on Energy Statistics, 2009-2012

Member, US Census Bureau Advisory Committee, 2002-2007

Editorial Board member: Journal of Marketing Research, 1991-2003
Journal of the Academy of Marketing Science, 2003-2007
Journal of Business Research, 1991-2014

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Ad hoc reviewer: Journal of Marketing, Journal of Consumer Research, Public Opinion Quarterly, various other journals.

National Science Foundation panelist, Innovation and Organizational Change program, 2004-05

National Conference Chair, American Marketing Association Educators' Conference, 1996

Doctoral Program Coordinator, UH Marketing Department, 1983-1988

Created the UH Doctoral Symposium, 1982

Have served on various university, college, department, and civic committees.

Consulting Experience

Have served as a business consultant to various organizations, primarily with respect to market research procedures, new product development, and retail operations.

Have served as a consultant or expert witness in various commercial lawsuits, primarily with respect to intellectual property issues and/or economic damages.

APPENDIX 2

BLAIR LIST OF LAWSUITS

Lawsuits in which Edward A. Blair has testified in recent years:

Rosetta Stone, Ltd. v. Google, Inc., No. 1:09-cv-00736-GBL-TRJ (E.D. Va.)

Mattel, Inc. v. MGA Entertainment, Inc., Civ. No. 04-cv-9049 (C.D. Cal.)

Teri Heggelund et al. v. Schlumberger Technology Corporation, No. 50-198-T-000548-10 (AAA)

Anheuser-Busch Incorporated v. Innvopak Systems Pty Ltd, Opp. No. 91194148 (TTAB)

Eolas Technologies Incorporated v. Adobe Systems, Inc. et al., No. 6:09-cv-00446-LED (E.D. Tex.)

3M Company v. Professional Gallery, Inc., Opp. No. 91173411 (TTAB)

Autodesk, Inc. v. Michelle K. Lee, No. 1:13-cv-1464 (E.D. Va.)

Invensys Systems, Inc. v. Emerson Electric Co. and Micro Motion, Inc., No. 6:12-cv-00799 (E.D. Tex.)